



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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Date Mailed: June 24, 2019
MOAHR Docket No.: 19-004172
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, an in-person hearing was held on June 17, 2019, from Taylor, Michigan. The Petitioner appeared for the hearing and was represented by her attorney Victoria Wolcott. The Department of Health and Human Services (Department) was represented by Aundrea Jones, Hearings Facilitator.

ISSUE

Did the Department properly process or consider Petitioner's medical expenses for Food Assistance Program (FAP)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. In December 2018, Petitioner's caseworker discovered that some medical expenses listed in her file had been considered more than once for FAP eligibility, and that some medical expenses had not been verified; therefore, the caseworker ended these medical expenses so that they would not be considered in the determination of Petitioner's FAP eligibility.
2. Initially, Petitioner's FAP case was closed for reasons unrelated to this case.
3. On January 25, 2019, Petitioner's FAP case was reinstated with a reduced benefit rate of \$15.00 effective February 1, 2019 through July 31, 2020 based upon

\$260.00 in medical expenses after the cessation of the duplicates and unverified expenses.

4. On February 12, 2019, Petitioner faxed 17 pages of medical expenses to her caseworker after learning that some of her medical expenses were closed for consideration in her FAP benefits case; in an effort to cover her bases, Petitioner provided as many medical expenses as she could provide for the last year.
5. None of the documents were considered by the Department.
6. On February 22, 2019, Petitioner's attorney met with Petitioner's caseworker or her caseworker's supervisor and attempted to provide the Department with an additional 19 pages of medical expenses, some of which were resubmissions; all documents were refused by the Department.
7. On April 4, 2019, Petitioner resubmitted the medical expenses, but at this time, the Department elected to accept and consider some or all of the medical expenses.
8. On April 11, 2019, the Department issued a Notice of Case Action to Petitioner informing her of the increase in her FAP benefit rate effective May 1, 2019 through July 31, 2020, to \$192.00.
9. On April 19, 2019, the Department received Petitioner's request for hearing disputing the Department's failure to process her medical expenses in her FAP case, failure to apply the medical expenses to the appropriate months, and reduction in her FAP benefits effective February 1, 2019.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

In this case, Petitioner disputes the Department's decision to initially decline to accept her proofs of medical expenses, then later accepting them but only applying them in the month in which they were finally accepted, and also the reduction in her FAP benefits effective February 2019.

The parties do not dispute that Petitioner is eligible for a medical expense deduction based upon her status as a Senior, Disabled, or Disabled Veteran (SDV) group member. Policy provides that groups with one or more SDV member are entitled to a medical expense deduction for medical expenses of the SDV member that exceed \$35.00. BEM 554 (August 2017), p. 1. In order to provide clients with a medical expense deduction, the Department must estimate an SDV person's medical expenses for the benefit period using the following criteria:

- Verified allowable medical expenses.
- Available information about the SDV member's medical condition and health insurance.
- Changes that can reasonably be anticipated to occur during the benefit period.

BEM 554 (April 2019), pp. 8-9. Groups that have a 24-month benefit period must be given the following options for one-time-only medical expenses billed or due within the first 12 months of the benefit period:

- Budget the expense for one month
- Average the expense over the remainder of the first 12 months of the benefit period, or
- Average the expense over the remainder of the 24-month benefit period.

BEM 554, p. 9. The client is entitled to choose the most beneficial method for consideration of medical expenses in their FAP budget if the options exist. Verification sources include, but are not limited to, the following items:

- Current bills or written statements from the provider, which show all amounts paid by, or to be paid by, insurance, Medicare or Medicaid
- Insurance, Medicare, or Medicaid statements which show charges incurred and the amount paid, or to be paid, by the insurer
- DHS-54A, Medical Needs, completed by a licensed health care professional
- SOLQ for Medicare premiums
- Written statements from licensed health care professionals
- Collateral contact with the provider

BEM 554, p. 12. Finally, a bill must not be overdue in order to be considered for FAP benefits. BEM 554, p. 11. A bill is not overdue if it is currently incurred, currently billed, or if a client made a payment arrangement before the medical bill became overdue. BEM 554, p. 11-12.

Once the Department receives a verification of a reported change, the Department is required to act on the reported change within ten days of receiving it. BAM 220 (April 2019), p. 7.

Petitioner is a 24-month redetermination cycle FAP recipient. Therefore, she is entitled to the option to have her one-time medical expenses budgeted over her benefit period from the date the expense was reported until the end of the period if it was incurred in the first 12 months of her benefit period. She is also entitled to have the option to have the expense budgeted in the month it was reported according to policy. The Department testified that some medical expenses were budgeted multiple times and that others were unverified, yet the Department failed to identify any expenses at the hearing that were budgeted more than once or that were unverified other than the Medicare Part B Premium. Based upon the evidence presented by the Department, it is impossible to know whether Petitioner and her previous caseworkers had agreed that a one-time medical expense should be budgeted over her benefit period.

In addition, Petitioner attempted to submit by fax and then through her attorney two sets of medical expense records and both were declined by the Department but not documented in the electronic case file. When the Department receives a document, even if the document is deemed inadequate for verification purposes, the document must be accepted and processed into the electronic case file by the Department. Since the Department refused to accept documents and place them in the case file, the possibility exists that the Department failed to properly process previously submitted medical expenses which would have verified the budgeted medical expenses which were ended in December 2018.

Finally, it should be noted that after refusing to accept Petitioner's medical expenses in February, the Department finally accepted them on April 4, 2019 and applied the expenses toward May 2019 ongoing. Since the Department ultimately agreed with Petitioner that at least some of the expenses should have been budgeted, it stands to reason that these same expenses when submitted in February 2019 should have been budgeted in February upon her first attempt at submission.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it ended medical expenses in Petitioner's FAP case, refused to accept medical expenses in February 2019, and applied the medical expenses to May 2019 ongoing after the April 4, 2019 submission.

DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reprocess Petitioner's medical expense to determine FAP eligibility effective the first day that medical expenses were ended in her case after the December review;
2. If otherwise eligible, issue supplements to Petitioner for benefits not previously received effective the day that the medical expenses ended after the December review;
3. Reprocess Petitioner's medical expense submissions or attempted submissions from February 12, 2019 and February 22, 2019;
4. If otherwise eligible, issue supplements to Petitioner for FAP benefits not previously received after consideration of the medical expenses submitted or attempted submissions from February 2019;
5. Issue notice to Petitioner of its decisions.



AMTM/jaf

Amanda M. T. Marler
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Jeanenne Broadnax
MDHHS-Wayne-18-Hearings

Petitioner

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